

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

**Criminal Appeal No.834-DB of 1997
Date of decision: 23.04. 2007**

Amar Nath.

-----Appellant.

Vs.

The State of Punjab.

-----Respondent.

**CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE H.S. BHALLA**

Present: Mr. Vijai Rana, Advocate
for the appellant.

Mr. H.S. Brar, DAG, Punjab
for the respondent.

Adarsh Kumar Goel, J.

The appellant questions his conviction under Section 302 IPC and sentence of imprisonment for life and to pay fine of Rs.2,000/- in default, to undergo further RI for three months.

Case of the prosecution is that Santosh Rani, deceased, daughter of Dhani Ram (PW-8) was married to the appellant about 1½ years prior to the occurrence, which took place on 18.6.1995. FIR was registered on the dying declaration of the deceased, recorded by Executive Magistrate at 7 P.M. to the effect that the appellant was having illicit relations with Sita, sister of Smt. Bhajno wife of brother of the appellant and on objection of the deceased, she used to be given beatings by the appellant and other co-accused Harmesh Kumar,

Harbhajan Kaur and Pushpa Rani, who have since been acquitted. She was even turned out of the house, but a compromise was reached and she resumed cohabitation about a month prior to the occurrence. The appellant and the other co-accused again started giving beatings to the deceased. On the date of occurrence, in the morning, the appellant and the other co-accused gave beatings to the deceased and the appellant poured kerosene oil on her and set her on fire. She raised hue and cry. The neighbours tried to extinguish the fire. Thereafter, the appellant got her admitted in the local Civil Hospital. She was brought to the hospital at about 4.10 P.M., on which, the doctor informed the police. ASI Inderjit Singh (PW-9) received an intimation from the hospital. He made an application (Ex. PD) to the Executive Magistrate to record the statement of the injured. PW-1 Amarjit Pal, Executive Magistrate went to the hospital and after obtaining the opinion of the doctor Ex.PW-10/A/1 at 6.20 P.M., he recorded the statement of the deceased Ex.PB in the presence of Dr. Ajay Sahni (PW-10), who gave certificate Ex.PB/1, below the statement, to the effect that she remained fit during her statement. PW-12 Rajinder Singh, the then SHO also reached the hospital and took over the investigation. He recovered the kerosene oil and one match box from the place of occurrence vide recovery memo Ex.PW-8/A. Subsequently, PW-12 Rajinder Singh received chit (Ex.PW-12/C from the hospital that Smt. Santosh Rani died at 7.25 P.M. PW-12 Rajinder Singh prepared inquest report (Ex.PW-7/C and got post-mortem examination conducted. Dr. Surinder Singh (PW-7) conducted the post-mortem examination. According to him, cause of

death was shock and dehydration resulting in cardio respiratory failure due to 90% burns, which were ante mortem and sufficient to cause death in the ordinary course of nature.

After completing investigation, he sent up the accused for trial.

The prosecution examined Dalip Singh, Draftsman (PW-1), SI Santokh Singh (PW-2), MHC Jagir Singh, Formal Witness (PW-3) DSP Surinder Kumar Kalia (PW-4), HC Vijay Kumar (PW-5), Constable Salinder Singh (PW-6), Dr. Surinder Singh (PW-7), Dhani Ram, father of Santosh Rani, deceased (PW-8), ASI Inderjit Singh (PW-9), Dr. Ajay Sahni (PW-10), Sh. Amarjit Pal (PW-11) and DSP Rajinder Singh (PW-12).

The accused denied the prosecution allegations. The appellant stated that the deceased had gone to see her ailing mother in the morning on the date of occurrence. He had also gone away for his work. On return, in the afternoon, he found his wife with burn injuries. Number of persons had collected at the spot. He made arrangement to take the deceased to the hospital and sent a message to his father-in-law Dhani Ram (PW-8), who along with other family members, came to the hospital at 5 P.M. The deceased was tutored to make statement implicating him. He was living happily with his wife. The remaining accused were living separately. His gold chain and valuable articles were in the custody of his in-laws.

After considering the evidence on record, the trial Court held the case of the prosecution to be proved against the appellant while acquitted the co-accused.

We have heard learned counsel for the parties and perused the record.

Main question for consideration is whether dying declaration was faithfully recorded in accordance with law and was reliable so as to base conviction of the appellant thereon.

Learned counsel for the appellant submitted that the deceased was not in fit state of mind and was not fit to make statement and that the doctor namely Dr. S.K. Sharma, who examined the deceased, was not examined and there was no evidence that burn was by kerosene oil. The husband had carried the deceased to the hospital and since the deceased was aggrieved by the husband on account of suspicion of his character, she may have made a wrong dying declaration implicating him and other members of his family.

Reliance has been placed on judgments of the Hon'ble Supreme Court inter-alia in **Smt. Laxmi v. Om Prakash and others** AIR 2001 SC 2383, wherein dying declaration was found not reliable on account of the deceased having 85% burns and **P.Mani v. State of Tamil Nadu** 2006(2)RCR (Criminal) 159, wherein dying declaration was found not reliable on the ground that the husband had carried the deceased to the hospital and the wife nurtured grudge against him.

Learned counsel for the State supported the conviction of the appellant and pointed out that in the present case, the dying declaration was reliable and conviction was justified. It was submitted that the judgments relied upon by learned counsel for the appellant are distinguishable.

We have considered the rival submissions and perused the record.

In **Ramilaben Hasmukhbhai Khristi v. State of Gujarat** AIR 2002 SC 2996, it was observed:-

“28. Under the law, dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. It may not be necessary to look for corroboration of the dying declaration. As envisaged, a dying declaration is generally to be recorded by an Executive Magistrate with the certificate of a medical doctor about the mental fitness of the declarant to make the statement. It may be in the form of question and answer and the answers be written in the words of the person making the declaration. But the court cannot be too technical and in substance if it feels convinced about the trustworthiness of the statement which may inspire confidence such a dying declaration can be acted upon without any corroboration.”

In **Laxman v. State of Maharashtra** AIR 2002 SC 2973, it was observed as under:-

“For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observation of this Court in *Paparambaka Rosamma v. State of Andhra Pradesh*, 1999 (7) SCC 695 to the effect that “in the absence of a medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective

satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration has been too broadly stated and is not the correct enunciation of law. It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in a fit state of mind specially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the judgment of this Court in *Paparambaka Rosamma v. State of Andhra Pradesh*, 1999 (7) SCC 695 must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji v. State of Gujarat*, 1999 (9) SCC 562 case.”

In the present case, the dying declaration has been recorded by PW-11 Amarjit Pal, SDM, the Executive Magistrate. Before recording the statement, opinion of the doctor regarding her evidence Ex.PW-10/A/1 was taken, who deposed that the deceased remained conscious throughout during the course of recording of the statement and after completion of the statement, the doctor gave certificate Ex.PB/1 regarding her fitness. The doctor remained on duty and none except the deceased, the doctor and the Magistrate was present in the room. In cross-examination, no dent could be caused to the testimony of PW-11 Amarjit Pal. PW-10 Dr. Ajay Sahni deposed that he gave his opinion Ex.PW-10/A/1 about fitness of the deceased to make statement and he remained present throughout in the course of recording the statement and the deceased remained

mentally fit and after completion of the statement, he gave certificate Ex.PB/1 that she remained fit during her statement. His testimony also remained unshaken during the cross-examination. There is no reason whatsoever to doubt the version given by PW-10 Ajay Sahni and PW-11 Amarjit Pal, Executive Magistrate. Thus, it stands established that the deceased was in fit condition to make the statement and the statement was voluntary. There is no reason whatsoever not to rely upon the dying declaration.

Coming to the judgment relied upon by counsel for the appellant in **Smt. Laxmi v. Om Prakash** (*supra*), the first dying declaration was recorded by the police officer, who did not mention the making of the statement to the Investigating Officer nor the said fact was mentioned in the FIR. There were several dying declarations. Another dying declaration was recorded by the Magistrate, but there was no endorsement thereon by the doctor about the fitness of the deceased to make the statement. At the time of making the statement, the deceased was on heavy sedation by the doctor, making it doubtful that the deceased made any dying declaration at all. There was no medical evidence showing that the deceased was physically and mentally in fit condition at the relevant time. In these circumstances, the dying declaration was not accepted as genuine.

In **P.Mani** (*supra*), the deceased was suffering from depression and had made an attempt to commit suicide a week prior to the date of occurrence. This fact was established by the evidence of son and daughter of the deceased. Prosecution witnesses admitted

that the deceased had bolted the room from inside. The deceased had strained relations with her husband and in these circumstances, it was held that truthfulness of the dying declaration was open to doubt.

In the present case, there is nothing on record that the deceased suffered from any depression or suicidal tendency or that she had bolted herself in the room. On the contrary, the appellant was torturing the deceased on her objecting to the illicit relations. PW-8 Dhani Ram, father of the deceased deposed that the deceased had narrated her miseries to him. She had been turned out of the matrimonial home and with the intervention of the respectables, she had resumed cohabitation, but the appellant continued to harass her. The appellant denied his presence at the place of occurrence. As already mentioned, the doctor has certified fitness of the deceased before and during the statement. The Magistrate also corroborated this fact. Having regard to the material on record, in the present case, the prosecution has been able to establish the guilt of the appellant. The trial Court was justified in convicting and sentencing the appellant.

We do not find any merit in the appeal.

The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

April 23, 2007
ashwani

(H.S. BHALLA)
JUDGE